No. 08-355

Supreme Court, U.S.
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In The

Supreme Court of the United States

NANCY A. BURNS STRATTON,

Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY,

Respondent.

On Petition For Writ Of Certiorari To The Florida Second District Court Of Appeal

REPLY BRIEF

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Normally, Petitioner would not file a reply, but the County misstates an undisputed fact, namely that the "county condemned the seaward portion of Stratton's house as an unsafe structure in March 2001." Brief in Opposition, p.26; see also, p.6. The home was not condemned then. Rather, only the separate utility chase on the seaward structure was condemned then, which had no effect on the main structure of the residence. (R. 2101-2102, 4349-50).

The "scour effect" referenced on p. 4 of the County's Brief in Opposition resulted from the County granting permits and variances to Stratton's neighbors to erect seawalls and revetments, which allowed them to protect their properties but exacerbated the erosion to Stratton's property. If there is an armored stretch of beach which is adjacent to an unarmored stretch, the waves and energy scour out sandy beaches such as Stratton's. In spite of the scouring affect, all seawall variance applications were approved except Stratton's. (T. 317). In fact, the dissenting Commissioner remarked that the Board had never previously denied a variance for a homeowner to protect a home at imminent risk of destruction. (T. 374).

The County suggests that Stratton's only remedy was "to move the seaward structure landward." Brief in Opposition, p.4. On October 30, 2000, Jerry Sparks, a County building official, issued a Notice of Unfit or Unsafe Structure(s) and Order to Correct. (R. 2062-71, 4335-44). It directed the Rubins (the previous owners) to either demolish the structure or obtain

a building permit to make the necessary structural repairs. If they chose to repair, they would be required to retain a licensed structural engineer to submit plans and obtain a permit. (R. 2063, 4336). Richard Hurter, a County structural engineer, recommended that a structural engineer immediately design temporary support to be placed under the edges of the exposed foundations, pending approval of a variance to build a seawall, a critical component for long term stability, which the County later refused. (R. 5572-3).

The County claims that Stratton proposed a "vertical aluminum seawall." Stratton never proposed a "vertical aluminum seawall"; rather, that was proposed by the previous owners, not Stratton. Nancy Stratton (formerly known as Nancy Burns) proposed a steel *sheet* pile wall identical to those granted to some of her neighbors to the north and to the south. (R. 4365; T. 66, 97-8, 106, 390-1).

Respectfully submitted,

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